

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 513 of 1998

with

CRIMINAL MISC.APPLICATION No 3880 of 1998

in

CRIMINAL APPEAL No 513 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 - No.

RAHIMBHAI ISABBHAI PATHAN

Versus

GIRDHARBHAI HARIBHAI SAPARA

Appearance:

M/S THAKKAR ASSOC. for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/02/99

ORAL JUDGEMENT

Heard learned counsel for the petitioner and learned APP for the respondent No.2-State.

2. The present petitioner-original complainant has preferred one complaint being criminal case No.1183 of 1988 before the learned Judicial Magistrate, First Class at Botad wherein at the end of trial, present respondent Mr.Girdharbhai Haribhai Sapara was convicted. Against the conviction order, he preferred Criminal Appeal No.20 of 1996 before the learned Jt. District Judge, Bhavangar. After hearing the learned advocates of the respective parties, the learned Jt.District Judge has passed an order on 30-3-1998 allowing the appeal. It is against the said order, present appeal is preferred with an application for leave.

3. I have gone through the judgments of the Court below and the record and proceedings of the case. Facts remain that present respondent is doing the business at Village Haddad. It appears from the record that he has raised a loan for the purpose of purchasing a drilling machine from the bank showing the address of Village Haddad. The agricultural land of the respondent situated at the sim of Village Haddad was pledged with the bank at the time of getting loan from the bank. It appears from the record and proceedings that Officers of Botad Nagar Palika has filed the criminal complaint against the respondent-accused on the ground that he has not paid octroi of the drilling machine which he has purchased, when he was keeping the same and doing the business in the limits of Botad Nagar Palika itself. But the facts emerge from the record speak otherwise and prosecution has failed to establish the case against the respondent-accused. When the respondent-accused is having other business in Botad, it does not mean that he is doing the business of drilling and keeping the machine in the limits of Botad Nagar Palika. As I have discussed earlier, drilling machine was purchased by the respondent-accused showing the place of business and residence as Haddad where he has got interest and agricultural land. Merely because he has kept the contract of drilling the bore of the Botad Nagar Palika, this complaint has been filed by the complainant. If one takes the drilling machine in the limits of Botad Nagar Palika having a valid contract, it does not mean that he

has shown wrong address of Haddad and he is not keeping and doing the business there, but he is doing the business at Botad Nagar Palika.

4. Under the circumstances, I do not find any reason to interfere with the judgment and order passed by the Court below either on facts or on law. Leave refused. Accordingly, Criminal Misc. Appln. No.3880 of 1998 is rejected. Appeal No.513 of 1998 is also rejected.

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